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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

AUG 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Developing a Unified Intercarrier
Compensation Regime

CC Docket No. 01-92

COMMENTS OF
MPOWER COMMUNICATIONS CORP.

I. Introduction and Summary

The Federal Communications Commission (“Commission”) initiated a rulemaking proceeding on intercarrier compensation and seeks comments on appropriate goals of any intercarrier compensation regime, in general, and on bill and keep arrangements, in particular.¹ Traditional goals of intercarrier compensation have emphasized network efficiency.² Other issues or concerns in setting goals include the amount of regulatory intervention involved,³ the likelihood of new problems arising from changes in regulatory approaches,⁴ and whether the increasing use of new technologies and the advent of local competition justify a single, unified approach to intercarrier competition.⁵

Mpower Communications Corp. (“Mpower”) will comment generally on these goals and on the appropriateness of bill and keep arrangements in light of the characteristics of the telecommunications environment, intercarrier compensation

¹ Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92, Notice of Proposed Rulemaking, rel. April 27, 2001 (“Notice”), ¶¶ 31-36.

² Id. at ¶¶ 31-33.

³ Id. at ¶ 34.

⁴ Id. at ¶ 35.

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arrangements, and reasonable steps for what appears to be a transitional period. In general, Mpower believes that today's telecommunications industry is characterized by rapidly changing technology, significant merger and acquisition activity, and numerous regulatory initiatives, all of which are moving the industry inexorably toward the confluence of technologies, networks, and services.

Because of the amount of change and uncertainty, as well as the apparent convergence of these events, Mpower believes that the Commission should not drastically alter the current regulatory regime at this time. Specifically, Mpower urges the Commission to designate bill and keep as the default mechanism only for local calls and for Extended Area Service (“EAS”), absent individually negotiated, voluntary contracts that establish different carrier compensation arrangements.⁶ Further, as the Commission has only recently adopted changes to access charges,⁵ the Commission should continue to address that issue in those established dockets. In the instant proceeding, however, the Commission should only reiterate its explicit right to revisit its plans regarding access charges as the established transition periods end.

⁵ Notice at ¶ 36.

⁶ Mpower's petition for approval of a flexible contract mechanism not subject to pick and choose (“FLEX Contracts”) currently pending before the Commission in CC Docket No. 01-117, offers an opportunity for carriers to develop efficient and desirable wholesale arrangements between themselves, including network arrangements, volume and term discounts, and compensation arrangements.

⁷ See *Reform of Access Charges Imposed by Competitive Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, rel. April 27, 2001 (establishing new regulations governing CLEC access charges) (“CLEC Access Charge Order”) and *Access Charge Reform*, CC Docket No. 96-252, *Sixth Report and Order*, 15 FCC Rcd 12962 (2000) (establishing new regulations governing price cap carrier access charges) (“CALLS Order”).

As explained further below, now is not an appropriate time to risk the natural development of an efficient telecommunications market by inviting the unintended consequences of new regulatory schemes.

II. Characteristics of Current Telecommunications Environment

A. Technology is changing

During the last few years, new technology has been implemented at a record pace. Increased deployment of fiber and the development of new uses of traditional copper facilities have changed both the capacity of the telecommunications network and the services being offered. Packet switching technology initially developed for data transfer is being used increasingly to transmit voice calls. At the same time, wireless technology is becoming ubiquitous, satellites are being used to transfer telecommunications signals, and parallel communications networks are being developed for cable systems.

New market entrants deploy new technologies in their networks and offer competitive services to customers in ways that challenge the relevance and effectiveness of traditional regulations developed at a time when specific types of carriers (*i.e.*, interexchange carriers (“IXCs”) and local exchange carriers (“LECs”)) were designated to offer discrete types of telecommunications services (*i.e.*, long distance and local exchange, respectively). The underlying cost structure of modern networks is less distance- and duration-sensitive, further diminishing the differences between call types and carrier types. The regulatory/market framework of the industry must reflect the changes in the underlying network and participants.

B. Networks are changing

The Regional Bell Operating Companies (“RBOCs”) are beginning to obtain approval to provide interLATA services under the competitive checklist established in Section 271 of the Telecommunications Act of 1996 (“1996 Act”). No longer restricted to providing only local exchange and intra-LATA intrastate toll services, the service areas of the RBOCs frequently are becoming similar to the competitive, less regulated carriers. As the RBOCs continue to obtain 271 authority, the traditional LATA designations will largely cease to be meaningful. Further, as they regain the full-service status that the divestiture of the AT&T system eliminated, the local and long distance dichotomy of their networks will be further reduced.

Since Congress passed the 1996 Act, the merger of RBOCs and other large telecommunications companies has dramatically expanded both the size and capabilities of the traditionally regional networks. Further, many telecommunications carriers have acquired networks that deploy more than one type of technology. Increasingly, the distinction between local and long distance traffic will diminish in significance as larger amounts of traffic travel from end-to-end on a single carrier’s network.

III. Intercarrier Compensation Arrangements

Prior to the passage of the 1996 Act, most interconnecting ILECs exchanged traffic under bill and keep arrangements. Rather than extend such arrangements to new carriers as well, many ILECs insisted upon reciprocal compensation, most likely because they thought they would benefit financially from asymmetrical traffic flows. In response, some competitive LECs (“CLECs”) marketed their services to customers who receive more traffic than they originate, resulting in the Internet Service Provider (“ISP”)-bound

traffic intercarrier compensation issue that the Commission has recently attempted to resolve.⁸

In a few short years, we have come almost full circle. In its recent *ISP Order*, the Commission adopted a phased-in approach to bill and keep arrangements for the reciprocal exchange of ISP-bound traffic, thus, eventually eliminating arbitrage from such asymmetrical termination of traffic. Although it is still too soon to evaluate the impact this change will have on the cost of Internet access, it is likely to result in more balanced traffic flows between interconnecting carriers. For the interim, however, it appears the Commission has resolved this issue.

Of course, some carriers, including Mpower, did not target ISPs and have always sought bill and keep arrangements for local traffic wherever possible. Indeed, some companies that generally mirrored the traditional ILEC-to-ILEC bill and keep compensation arrangements may not have made huge investments in additional software for tracking, storing, and billing for reciprocal compensation for local calls. By not incurring these additional costs, these carriers would not have been forced to recover such costs from their customers.

Mpower believes the bill and keep model is most efficient for local intercarrier compensation and also for EAS. EAS service is just an extension of local service to larger geographical areas as metropolitan areas expand. There is little cost difference between calls made within a traditional exchange area and those that expand geographically as metropolitan calling patterns extend. Thus, Mpower believes that **EAS** calls, like traditional local service, also should be subject to bill and keep. Carriers could

⁸ *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket 99-68, *Order on Remand and Report and Order*, FCC 01-131 (rel. April 27, 2001) ("*ISP Order*").

realize significant administrative cost savings by no longer billing **EAS** calls. Moreover, a usage-insensitive bill and keep arrangement for the underlying costs of these calls is economically consistent with the flat-rated nature of many local calling plans available today.

Intrastate and interstate long distance, on the other hand, traditionally have been measured and billed on the basis of distance and duration of calls. Providers of these services have already invested in the necessary measuring and billing systems. To the extent the cost to carry such traffic is distance- and duration-sensitive, the Commission should retain an intercarrier compensation mechanism that assesses access charges for origination and termination of the calls, at least until the Commission has an opportunity to revisit the matter following the transition periods it adopted in the *CLEC Access Charge Order* and the *CALLS Order*.

IV. Reasonable Steps for Transitional Period

Effective competition has not developed adequately for the Commission to significantly overhaul the current regulatory framework. Instead, Mpower urges the Commission to make only minor changes during this period of transition to competition. Carriers that exchange local traffic should not charge each other to terminate their respective calls. A local network is normally contained within a dense geographic area, and distance and duration considerations are not generally significant. A bill and keep arrangement for traffic exchange accurately reflects the economic nature of a local network.

Moreover, increasingly multi-purpose or expanded networks should produce traffic volumes that are more balanced and should result in the costs of network usage

being borne more consistently by those who use the networks. As reciprocal compensation rates become even lower, it is no longer economically rational to incur the administrative costs to bill for any differences in traffic volume. The Commission has taken the first step in moving toward a bill and keep regime for local traffic. At the end of the three-year transition period, Mpower urges the Commission to adopt bill and keep as a default mechanism for local traffic, absent voluntary contracts to the contrary, as it is the most efficient and most fair approach for this traffic.

Also, because EAS traffic exhibits characteristics similar to local traffic, Mpower believes that, for intercarrier compensation purposes, the Commission should treat **EAS** the same as local service. For all intents and purposes, EAS is essentially local traffic. Many commissions already require that such calls be rated as local. The Commission should also consider the benefits of requiring bill and keep as a default for this traffic now, absent voluntary contracts to the contrary, (even prior to the termination of the three-year transition period for traditionally local traffic) as it could serve as a useful test of the wider operation of bill and keep prior to adopting bill and keep as the default system for all local traffic.

Because intrastate toll is under the jurisdiction of the state commissions, the Commission's role in determining intercarrier compensation models for the exchange of such traffic likely will be limited to only indirect influence. Frequently, however, the States pattern their access arrangements after the Federal model. Thus, if the logic and plan the Commission adopts for interstate access charges are sound, the States will likely be more willing to follow suit.

The Commission already is addressing potential opportunities for regulatory arbitrage inherent in the existing access charge regime, and it adopted a phased-in approach in the *CLEC Access Charge Order* and the *CALLS Order*. Mpower submits that the Commission should continue to deal with those issues in those on-going proceedings rather than address those matters at this time and in this proceeding. Further, the transitional nature of the Commission's access charge plans will allow the states an opportunity to respond appropriately to the Commission's actions.

By making few changes to the current system, market and technological changes will be allowed and encouraged to proceed at their own pace. There likely will be many changes in the market by the end of the period during which reciprocal compensation rates and CLEC access charges are phased-down, and the CALLS plan is in effect. Having set these mechanisms in motion, the Commission should let them run their course. Mpower believes that much of the proposed change toward a unified system of compensation may well be underway already and ultimately may be achieved simply by allowing the current processes to continue. There simply is no reason to dramatically change the rules at this time.

Moreover, continuing on the Commission's current course should also minimize any negative impact on companies that have established long-term business plans and made investments based on the current regulatory framework. Now is not the time in the development of a competitive telecommunications market to introduce additional change and uncertainty. Consumers will benefit the most from competition and the price and product efficiencies that it engenders if the Commission refrains from taking dramatic regulatory steps at this time.

V. Conclusion

Mpower respectfully urges the Commission to make only minimal changes to the system of intercarrier compensation at this time. Specifically, it should implement bill and keep as a default system only for the exchange of local traffic and EAS service, absent voluntary contracts to the contrary. It should make no fundamental changes to the interstate access compensation system at this time, but should continue to work on these issues in the *CLEC Access Charge* and the *CALLS* dockets in which the Commission has already adopted initial Orders and established transition plans.’

Respectfully submitted,

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⁹ No statements made in these Comments should be interpreted as stating positions inconsistent with Mpower’s positions in other proceedings, including its positions regarding issues in the CLEC Access Charge docket.

I, Elizabeth Dickerson, do hereby certify that a copy of the foregoing Comments of MPower Communications Corp. were served this 21st day of August, 2001, via hand delivery to the following:

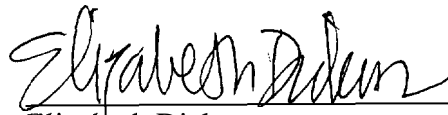
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